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8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 In re RAMIN YEGANEH, ) Dist Ct Case No. C-08-01401 CW  
12 )  
13 Debtor. ) BK Case No. 05-30047 TEC  
14 )  
15 CHARLES E. SIMS, Trustee, ) Chapter 7  
16 )  
17 Plaintiff/Appellee, ) Adversary Proceeding Nos.  
18 ) 05-3240; 05-3242; 05-3243 TEC  
19 vs. )  
20 ) OPPOSITION TO MOTIONS TO  
21 ) DISMISS APPEALS OF  
22 ) INTERLOCUTORY ORDERS  
23 ) [FRCP, Rule 12(b)(1)]  
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25 ) Court: Honorable Claudia Wilken  
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1 debtor's parents. Plaintiff/Appellee Trustee alleged in his adversary  
2 complaints that by "transfers" of certain real properties (adversary  
3 properties) about three years before there was a judgment against the debtor,  
4 and about four years before this Chapter 7 bankruptcy, the debtor intended to  
5 hinder, delay, or defraud his creditors or became insolvent as a result of said  
6 transfers. Needless to say, at the time the alleged transfers occurred in 2001,  
7 the debtor was unaware of the names of any of the creditors/claimants. The  
8 only named plaintiff at the time was suing in a representative capacity under  
9 Business and Professions Code sections 17200, et seq.

10  
11 The plaintiff/appellee based his allegations in his adversary  
12 complaints on California's Uniform Fraudulent Transfer Act (hereinafter  
13 "UFTA") contained in Civil Code sections 3439, et al. (See CC {  
14 3439.04(a)(1), (a)(2).) The plaintiff/appellee also relied in these adversary  
15 complaints on Title 11 of the United States Code, section 544(a) as  
16 providing him with standing to avoid these transfers that could have been  
17 avoided by a creditor under local law, that is California's UFTA.

18  
19 Section 544(a) confers standing on the plaintiff/appellee under federal  
20 law to bring these adversary proceedings on behalf of the individual  
21 creditors. However, the extent of the plaintiff/appellee's rights to pursue  
22 these adversary complaints is measured by the substantive law of the  
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1 jurisdiction governing the properties in question. (In re Bridge (3<sup>rd</sup> Cir.  
2 1994) 18 F.3d 195; see also Collier on Bankruptcy, Fifteenth Edition  
3 Revised, Vol. 5, { 544.02, p. 544-6 [citing numerous multi-jurisdictional  
4 authorities].) Here the substantive law is the law of California's UFTA.  
5

6  
7 Defendants/appellants moved for summary judgment as to these  
8 adversary complaints and on all causes of action contained therein. The  
9 basis for these motions was that the individual creditors did not have  
10 standing to pursue these adversary complaints under the UFTA because their  
11 allowed claims had already been satisfied by the plaintiff/appellee, or should  
12 have been satisfied by that time. That is, the prior sales of the debtor's five  
13 real properties had generated more than enough funds to pay off these  
14 individual creditors. In fact the plaintiff/trustee admitted that the creditors  
15 were paid off in his appellate brief on a related adversary proceeding where  
16 summary judgment was entered in favor of said plaintiff/trustee and  
17 appealed by defendants/appellants<sup>1</sup>. Hence these individual creditors who  
18 submitted claims have been paid in full and have suffered no prejudice.  
19 They had suffered no affirmative harm as required by California law to  
20 pursue an avoidance action under the UFTA. (See Mehrtash v. Mehrdash  
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27 <sup>1</sup> See Sims v. Allied Management Trust, et al, Case No. C07-03256 CW, Appellee's Brief, p. 19(28)—p.  
28 20(2), filed on March 19, 2008.

1 (2001) 93 Cal.App.4<sup>th</sup> 75, 80 [“A transfer in fraud of creditors may be  
2 attacked only by one who is injured thereby.”].) Consequently  
3 defendants/appellants argued that neither the creditors nor the  
4 plaintiff/appellee as bankruptcy trustee had standing to pursue these  
5 adversary actions.  
6

7  
8 Defendants/appellants filed these motions for summary judgment on  
9 October 18, 2006. The Bankruptcy Court took the summary judgment  
10 motions under submission in November of 2006.  
11

12 On February 28, 2008, the Bankruptcy Court denied the  
13 defendants/appellants’ motions for summary judgment in all adversary  
14 proceedings and set this matter for a jury trial to begin on June 3, 2008. On  
15 March 6, 2008, the defendants/appellants filed notices of appeal from the  
16 denial of their summary judgment motions with an election to proceed  
17 directly to this District Court. An order denying a motion for summary  
18 judgment is not a final appeal order but an interlocutory order.  
19  
20 Defendants/appellants did not obtain prior leave to file interlocutory appeals.  
21

22  
23 Plaintiff/appellee now moves to dismiss the defendants/appellants’  
24 appeals. However as explained below, this Court has discretion to treat the  
25 defendants/appellants’ notices of appeal as motions for leave to appeal an  
26 interlocutory order, or direct that such a motion be filed, or may grant leave  
27  
28

1 to prosecute such an appeal, or deny leave to appeal but consider the notices  
2 of appeal as motions for leave to appeal. (See FRBP, Rule 8003(c).).

3  
4 Defendants/appellants respectively request that the Court exercise its  
5 discretion in whatever manner it wishes as long as it allows the  
6 defendants/appellants to prosecute said appeals.  
7

8  
9  
10 I

11 DEFENDANTS/APPELLANTS' APPEALS FROM THE DENIAL  
12 OF THEIR SUMMARY JUDGMENT MOTIONS SHOULD BE ALLOWED  
13 TO GO FORWARD

14 An order denying a summary judgment motion is an interlocutory  
15 order. (See Lum v. Honolulu (9<sup>th</sup> Cir. 1992) 963 F.2d 1167, 1169.) Title 28  
16 of the United States Code section 158(a)(3) provides that appeals of  
17 interlocutory orders may be prosecuted with leave of court. Rules of  
18 Bankruptcy Procedure Rule 8003(a) sets out the requirements of a motion  
19 for leave to appeal an interlocutory order. Such a motion shall contain: (1) a  
20 statement of the facts necessary to an understanding of the questions to be  
21 presented by an appeal; (2) a statement of those questions and of the relief  
22 sought; (3) a statement of the reasons why an appeal should be granted; and  
23 (4) a copy of the judgment or order complained of and of any opinion or  
24 memorandum relating thereto.  
25  
26  
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28

1 The Bankruptcy Court denied defendants/appellants' motions for  
2 summary judgment on February 28, 2008. On March 6, 2008 the  
3 defendants/appellants timely filed notices of appeal for each adversary  
4 proceeding. However defendants/appellants did so without leave of court as  
5 required by Title 28 of the United States Code section 158(a)(3) and Rule  
6 8003(a) of the Rules of Bankruptcy Procedure.  
7

8  
9 Nevertheless, Rule 8003(c) provides that this District Court can still  
10 grant leave to appeal or direct that a motion for such leave be filed.  
11 Additionally Rule 8003(c) provides that this Court may deny leave to appeal  
12 but consider the notice of appeal as a motion for leave to appeal. However  
13 the Court wishes to rule, defendants/appellants request that they be allowed  
14 to prosecute these appeals for the following reasons.  
15  
16  
17

18 To determine whether leave to appeal should be granted, the standards  
19 set forth in Title 28 of the United States Code section 1292(b) come into  
20 play. (In re Sperna (9<sup>th</sup> Cir. BAP) 173 B.R. 654, 658.)  
21

22 Under that statute, granting leave is appropriate if  
23 the order involves a controlling question of law as  
24 to which there is a substantial ground for difference  
25 of opinion and an immediate appeal may materially  
26 advance the ultimate termination of the litigation.

27 (Ibid.)  
28

1 In this matter the defendants/appellants' summary judgment motions  
2 were based on whether the plaintiff/appellee, acting as bankruptcy trustee,  
3 actually had standing to set aside these alleged fraudulent conveyances  
4 because the creditors who had submitted claims had already been paid off, or  
5 at least that the bankruptcy estate had more than enough funds to pay off  
6 these creditors without the benefit of the adversary properties. If it was  
7 determined that the plaintiff/appellee did not have such standing then this  
8 adversary litigation would be over. Hence this appeal concerns a controlling  
9 issue of law about which there is a difference of opinion between the parties  
10 and an immediate appeal, if successful, would immediately terminate this  
11 adversary litigation. Considering that there is a jury trial scheduled in this  
12 matter for June 3, 2008, an immediate appeal may likely save judicial time  
13 and resources as well as the parties' time and resources.<sup>2</sup>

14 Consequently, defendants/appellants respectfully request the  
15 plaintiff/appellee's motions to dismiss be denied. Defendants/appellants  
16 also respectfully request that this Court grant them the relief outlined in  
17 Rules of Bankruptcy Procedure, Rule 8003(c), whether it be to grant leave to

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26 <sup>2</sup> If this Court grants leave to allow the defendants/appellants to prosecute these appeals, they will  
27 immediately move for a stay of the scheduled jury trial in this matter. There can be no review of a denial of  
28 a summary judgment once there has been a trial on the merits. (Lum, supra, at 963 F.2d 1169-1170.)

1 appeal outright, or direct that a motion for leave to appeal be filed, or to  
2 consider the notice of appeal as a motion for leave to appeal.  
3

4  
5 CONCLUSION  
6

7 For the foregoing reasons, the plaintiff/appellee's motions to dismiss  
8 these appeals should be denied. Additionally, for the foregoing reasons,  
9 defendants/appellants should be allowed to prosecute these appeals pursuant  
10 to Rule 8003(c) of the Rules of Bankruptcy Procedure  
11

12  
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14 April 24, 2008

/S/ WILLIAM E. GILG, ESQ.  
WILLIAM E. GILG,  
Attorney for Defendants/Appellants  
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1 WILLIAM E. GILG  
2 Attorney at Law, SBN 151991  
3 305 San Bruno Avenue West  
4 San Bruno, CA 94066  
5 (650) 871-8647  
6 (650) 873-3168 (fax)

Attorney for Defendants/Appellants

7  
8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 In re RAMIN YEGANEH, ) Dist Ct Case No. C-08-01401 CW  
12 )  
13 Debtor. ) BK Case No. 05-30047 TEC  
14 )  
15 CHARLES E. SIMS, Trustee, ) Chapter 7  
16 )  
17 Plaintiff/Appellee, ) Adversary Proceeding Nos.  
18 ) 05-3240; 05-3242; 05-3243 TEC  
19 vs. )  
20 ) DECLARATION RE  
21 ) OPPOSITION TO MOTIONS TO  
22 ) DISMISS APPEALS OF  
23 ) INTERLOCUTORY ORDERS  
24 ) [FRCP, Rule 12(b)(1)]  
25 )  
26 )  
27 )  
28 ) Court: Honorable Claudia Wilken  
Defendants/Appellants. )

1  
2 I, WILLIAM E. GILG, declare as follows:  
3

4 1. I am an attorney at law duly licensed and authorized to practice law  
5 before all the courts of the State of California and this Federal District Court  
6 for the Northern District of California. I am the attorney of record for the  
7 defendants/appellants in these adversary appeals.  
8

9 2. These matters were adversary proceeding based upon alleged fraudulent  
10 transfers of adversary properties to the defendants/appellants, the debtor's  
11 parents. Plaintiff/Appellee Trustee alleged in his adversary complaints that  
12 by "transfers" of certain real properties (adversary properties) about three  
13 years before there was a judgment against the debtor, and about four years  
14 before this Chapter 7 bankruptcy, the debtor intended to hinder, delay, or  
15 defraud his creditors or became insolvent as a result of said transfers.  
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18 3. Needless to say, at the time the alleged transfers occurred in 2001, the  
19 debtor was unaware of the names of any of the creditors/claimants. The  
20 only named plaintiff at the time was suing in a representative capacity under  
21 Business and Professions Code sections 17200, et seq.  
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24 4. The plaintiff/appellee based his allegations in his adversary complaints  
25 on California's Uniform Fraudulent Transfer Act (hereinafter "UFTA")  
26 contained in Civil Code sections 3439, et al. (See CC { 3439.04(a)(1),  
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1 (a)(2).) The plaintiff/appellee also relied in these adversary complaints on  
2 Title 11 of the United States Code, section 544(a) as providing him with  
3 standing to avoid these transfers that could have been avoided by a creditor  
4 under local law, that is California's UFTA.  
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6  
7 5. Section 544(a) confers standing on the plaintiff/appellee under federal  
8 law to bring these adversary proceedings on behalf of the individual  
9 creditors. However, the extent of the plaintiff/appellee's rights to pursue  
10 these adversary complaints is measured by the substantive law of the  
11 jurisdiction governing the properties in question. (In re Bridge (3<sup>rd</sup> Cir.  
12 1994) 18 F.3d 195; see also Collier on Bankruptcy, Fifteenth Edition  
13 Revised, Vol. 5, { 544.02, p. 544-6 [citing numerous multi-jurisdictional  
14 authorities].) Here the substantive law is the law of California's UFTA.  
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18 6. Defendants/appellants moved for summary judgment as to these  
19 adversary complaints and on all causes of action contained therein. The  
20 basis for these motions was that the individual creditors did not have  
21 standing to pursue these adversary complaints under the UFTA because their  
22 allowed claims had already been satisfied by the plaintiff/appellee, or should  
23 have been satisfied by that time. That is, the prior sales of the debtor's five  
24 real properties had generated more than enough funds to pay off these  
25 individual creditors. In fact the plaintiff/trustee admitted that the creditors  
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1 were paid off in his appellate brief on a related adversary proceeding where  
2 summary judgment was entered in favor of said plaintiff/trustee and  
3  
4 appealed by defendants/appellants.

5 7. Hence these individual creditors who submitted claims have been paid in  
6 full and have suffered no prejudice. They had suffered no affirmative harm  
7 as required by California law to pursue an avoidance action under the  
8 UFTA. Consequently defendants/appellants argued that neither the creditors  
9 nor the plaintiff/appellee as bankruptcy trustee had standing to pursue these  
10 adversary actions.  
11  
12

13 8. Defendants/appellants filed these motions for summary judgment on  
14 October 18, 2006. The Bankruptcy Court took the summary judgment  
15 motions under submission in November of 2006.  
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17

18 9. On February 28, 2008, the Bankruptcy Court denied the  
19 defendants/appellants' motions for summary judgment in all adversary  
20 proceedings and set this matter for a jury trial to begin on June 3, 2008.  
21

22 10. On March 6, 2008, the defendants/appellants filed notices of appeal  
23 from the denial of their summary judgment motions with an election to  
24 proceed directly to this District Court. An order denying a motion for  
25 summary judgment is not a final appeal order but an interlocutory order.  
26  
27

28 Defendants/appellants did not obtain prior leave to file interlocutory appeals.

1 11. Plaintiff/appellee now moves to dismiss the defendants/appellants'  
2 appeals.  
3

4 12. Defendants/appellants respectively request that the Court exercise its  
5 discretion in whatever manner it wishes as long as it allows the  
6 defendants/appellants to prosecute said appeals.  
7

8 I declare under penalty of perjury under the laws of the State of  
9 California and the United States of America that the foregoing is true and  
10 correct. Executed on April 24, 2008 at San Bruno, California.  
11

12  
13  
14 /S/ WILLIAM E. GILG  
15 WILLIAM E. GILG,  
16 Attorney for Defendants/Appellants  
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**PROOF OF SERVICE**

I, the undersigned, state that I am a citizen of the United States and employed in the City of San Bruno, that I am over the age of eighteen (18) years and not a party to the within cause; that I am an active member of the State Bar of California; that my business address is 305 San Bruno Avenue West, San Bruno, California; and that on the date set out below I deposited a true copy of the attached documents, listed below, on the parties to the action by one or more of the following methods:

☒ First Class Mail

☐ Fax via (415) 356-4610

– by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at San Bruno, California;

Documents Served: **OPPOSITION TO MOTIONS TO DISMISS APPEALS OF INTERLOCUTORY ORDERS**

Party Served: CHARLES P. MAHER, ESQ.  
Luce, Forward, Hamilton & Scripps, LLP  
Rincon Center II, 121 Spear St., Suite 200  
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed at San Bruno, California on April 24, 2008.

/S/ WILLIAM E. GILG  
WILLIAM E. GILG,  
Attorney for Defendants/Appellants